

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PHARMACY
AND RICHARD S. JOHNSON, R.Ph.**

Come now Richard S. Johnson, R.Ph. ("Licensee or "Respondent") and the State Board of Pharmacy ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a registered pharmacist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the state of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided to Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believes was violated. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement

agreement are true and stipulates with the Board that Licensee's pharmacist license, License No. 40723, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2005 and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS

1. The Missouri Board of Pharmacy ("Board") is an agency of the State of Missouri created pursuant to § 338.140, RSMo¹ for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Respondent Richard S. Johnson, R.Ph. ("Licensee" or "Respondent") is licensed by the Board as a pharmacist, license number 40723. Licensee's Missouri pharmacist license was current and active at all times relevant herein.

3. At all times relevant herein, Licensee was employed as the Pharmacist in Charge ("PIC") at Medirate Professional Pharmacy, d/b/a Medicate Long Term Care Pharmacy ("Medirate") in Farmington, Missouri.

4. Beginning in or around the year 2000, Mark Lee Redmon ("Redmon") (date of birth 02/07/1973) began working at Medirate as a pharmacy technician.

5. During a 14-month period beginning in or around February, 2004 and ending in April, 2005, Redmon repeatedly diverted controlled substances from Medirate, including, but not limited to Alprazolam (brand name "Xanax"), Hydrocodone/APAP, Diazepam (brand name "Valium"), and APAP/Codeine.

6. On or about April 25, 2005, members of the St. Louis Drug Enforcement Administration, St. Charles County Regional Drug Task Force and the Farmington, Missouri

¹All statutory references are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise stated.

Police Department arrested Redmon, and he admitted to stealing controlled substances from Medirate during his employment there.

7. Police reports indicate that a search of Redmon's home revealed the following: one unopened 500-count stock bottle of Alprazolam, 434 ½ tablets of Xanax in a plastic bag, three tablets of hydrocodone, 109 tablets of acetaminophen with codeine, 16 tablets of Prozac, one unopened 100-count stock bottle of Paroxetine; and one stock bottle containing 26 tablets of Paxil. Redmon admitted to stealing these controlled substances from Medirate pharmacy, where Respondent Richard Johnson was PIC.

8. As of May 24, 2005, when the Board's investigator conducted an audit of Medirate's supplies of controlled substances, 297,647 dosage units of controlled substances including 8,667 milliliters of liquid controlled substances were unaccounted for.

9. The unaccounted for controlled substances are as follows:

Alprazolam 1 mg	79,041	15,268	-63,773	-80.7%
Alprazolam 2 mg	1,520	1,416	-104	-6.8%
Alprazolam .5 mg	105,450	63,203	-42,247	-40%
Hydrocodone APAP 10/650	101,250	32,763	-68,487	-67.6%
Hydrocodone APAP 10/325	30,325	15,696	-14,629	-48%
Hydrocodone APAP 10/500	3,500	2,981	-519	-14.8%
Hydrocodone APAP 7.5/325	16,600	11,179	-5,421	-32.7%
Hydrocodone APAP 5/500	167,800	124,333	-43,647	-26%

Hydrocodone APAP 5/325	34,400	31,836	-2,564	-7.5%
Diazepam 5 mg	24,087	17,435	-6,652	-27.6%
Hydrocodone APAP 7.5/750	32,200	11,534	-20,666	-64.1%
Hydrocodone 7.5/650	72,100	48,924	-23,176	-32.7%
APAP/Codeine #2 (15 mg)	185	100	-85	-46%
Hydrocodone Elixir	80,104 mL	71,437 mL	-8,667 mL (18 pints)	-11%
Diazepam 10 mg	14,500	10,994	-3,506	-24%
Hydrocodone APAP 7.5/500	10,950	9,134	-1,816	-16.6%

10. As a result of Johnson's failure to audit Medirate's inventory and its records, Johnson was unable to ascertain that one of Medirate's employees was regularly stealing from Medirate's stock of controlled substances for a period of approximately fourteen months.

11. Specifically, Johnson failed to conduct annual audits to discover missing dosage units of controlled substances while Redmon was engaged in stealing controlled substances from Medirate.

12. During the time that Johnson was PIC, Medirate did not have adequate security and controls in place to detect and prevent diversion of controlled substances.

JOINT CONCLUSIONS OF LAW

13. Section 338.055, RSMo 2000, in pertinent part, states as follows:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter.

* * * *

(13) Violation of any professional trust or confidence;

* * * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

* * * *

14. Regulation 20 CSR 2220-2.090(2) states, in pertinent part:

(2) The responsibilities of a pharmacist-in-charge at a minimum, will include:

* * * *

(E) Assurance that all procedures of the pharmacy in the handling, dispensing and recordkeeping of controlled substances are in compliance with state and federal laws;

* * * *

(N) The pharmacist-in-charge will be responsible for the supervision of all pharmacy personnel, to assure full compliance with the pharmacy laws of Missouri;

* * * *

(P) Policies and procedures are in force to insure safety for the public concerning any action by pharmacy staff members or within the pharmacy physical plant;

* * * *

(R) Security is sufficient to insure the safety and integrity of all legend drugs located in the pharmacy;

* * * *

(W) Assure full compliance with all state and federal drug laws and rules.

15. Regulation 20 CSR 2220-2.010(1)(H) states as follows:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

16. Regulation 19 CSR 30-1.031 states, in pertinent parts:

(1) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 30-1.032 -- 19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial

compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

(2) Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operations. If a controlled substance is transferred to a different schedule, or a noncontrolled substance is listed on any schedule, or the quantity of controlled substances in the possession of the registrant in normal business operations significantly increases, physical security controls shall be expanded and extended accordingly.

(3) All registrants who receive or transfer substantial quantities of controlled substances in normal business operations shall employ security procedures to guard against in-transit losses.

17. Federal Regulation 21 CFR 1301.71(a) states as follows:

(a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Administrator shall use the security requirements set forth in Secs. 1301.72-1301.76 as standards for the physical security controls and operating procedures necessary to prevent diversion.

18. Cause exists for the Board to take disciplinary action against Respondent pursuant to § 338.055.2(5) because Respondent's failure to maintain adequate security and controls to prevent the diversion of 297,763 tablets of controlled substances and 8,229 milliliters of liquid controlled substances constitutes incompetency, misconduct, and/or gross negligence, in the performance of Respondent's duties as a licensed pharmacist and as Medirate's PIC.

19. Cause exists for the Board to take disciplinary action against Respondent pursuant to § 338.055.2(6) because Respondent's failure to implement security or controls to safeguard Medirate's supplies of controlled substances enabled Redmon to steal substantial amounts of controlled substances on a regular basis for over fourteen months.

20. Cause exists for the Board to take disciplinary action against Respondent pursuant to § 338.055.2(13) because Respondent's failure to safeguard and control Medirate's supplies of controlled substances violated the professional trust and confidence placed in him as a registered pharmacist.

21. Cause exists for the Board to take disciplinary action against Respondent pursuant to § 338.055.2(15) because Respondent's failure to safeguard and control the pharmacy's stock of controlled substances, and subsequent failure to discover Redmon's theft of controlled substances is in violation of 20 CSR 2220-2.090(2)(E), (N), (P), (R) and (W); 20 CSR 2220-2.010(1)(H); 19 CSR 30-1.031; and 21 CFR 1301.71(a).

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

1. Respondent's pharmacist license will be placed on PROBATION for one (1) year pursuant to the provisions of Chapters 338 and 324 RSMo. During the period of probation, Respondent will be entitled to practice the profession of pharmacy pursuant to Chapter 338, RSMo provided he adheres to the following terms of probation:

A. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employments that requires frequent daily or weekly changes or work locations, he must provide the Board with all scheduled places of employment in writing prior to any scheduled work time.

B. Respondent shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

C. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Respondent shall make himself available for personal interviews to be conducted by a member of the Board or the Board staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

E. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Agreement.

F. If, after disciplinary sanctions have been imposed, Respondent ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, or begins employment as a pharmacist or technician outside the state, such periods shall not be deemed or taken as any part of the time for discipline so imposed. Respondent may petition the Board to seek a waiver for any portion of this requirement by making such a request in written form to the Board for its consideration. No exception will be made to this requirement without prior Board approval.

G. If Respondent leaves the State of Missouri for more than thirty (30) consecutive days, such periods shall not be included as part of the time of discipline so imposed.

H. Respondent shall provide all current and future pharmacy and drug distributor employers and/or pharmacist/manager-in-charges a copy of this disciplinary Agreement within five (5) business days of the effective date of discipline or the beginning date of each employment. If at any time Respondent is employed by a temporary employment agency, he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this Agreement prior to or at the time of any scheduled work assignments.

I. Respondent shall not serve as a preceptor for interns.

J. With the exception of employment for current employer, Interlock Pharmacy Systems, LLC, Respondent shall not serve in a supervisory capacity in any pharmacy or facility licensed or regulated by the Board without prior approval of the Board. Respondent shall not serve as pharmacist-in-charge (PIC) for any pharmacy or facility licensed or regulated by the Board, including pharmacies owned or under the control of Interlock Pharmacy Systems, LLC, during the term of this probation without the prior approval of the Board.

K. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six months (due by each January 1 and July 1), beginning with whichever date occurs first after this Order/Agreement becomes effective, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

2. The parties to this settlement agreement understand that the State Board of Pharmacy will maintain this settlement agreement as an open and public record of the Board as provided in Chapters 334, 610, 324 RSMo.

3. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

4. Upon the expiration of said discipline, Respondent's license as a pharmacist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Respondent. No order shall be entered by the board pursuant to this paragraph without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

5. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

6. Respondent, together with his heirs and assigns, and his attorneys, do hereby waive and release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE
LINE,

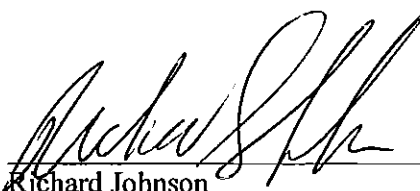
____ REQUESTS
X DOES NOT REQUEST

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS
SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S
LICENSE.

If Respondent has requested review, Respondent and Board jointly request that the
Administrative Hearing Commission determine whether the facts set forth herein are grounds for
disciplining Respondent's license and issue findings of fact and conclusions of law stating that
the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective
fifteen (15) days from the date the Administrative Hearing Commission determines that the
Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon
discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the
Settlement agreement goes into effect fifteen (15) days after the document is signed by the
Board's Executive Director.

RESPONDENT

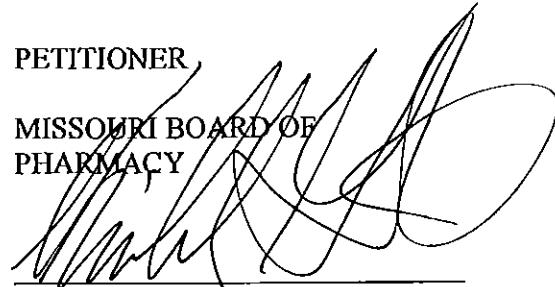

Richard Johnson

Date: 3/30/2009

PETITIONER

MISSOURI BOARD OF
PHARMACY


By:


Kimberly Grinston,
Executive Director

Date:


3/31/09 4/1/09

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